

20cr-184

Clerks Note: Correct case number is: 2:20-cr-00148-JAD-BNW

Donnell Henry

FED
ENTERED
SERVED ON
COUNSEL/PARTIES OF RECORD

JAN 3 - 2022
CLERK US DISTRICT COURT DISTRICT OF NEVADA
BY: _____ DEPUTY

After invoking the Speedy Trial Act and changing counsel March 25th 2021, the government failed to comply with the time limit required by "ACT" of 1974, **18 u.s.c 3161(b)** and **federal rule of criminal procedure 48(b)(1)**. pursuant to **18 u.s.c 3162**, counts 1 and 2 of the superseding indictment should be dismissed with prejudice.

June 14th 2021, 8 days before the set trial date, the u.s. Attorney superseded the indictment adding untimely discovery, demonstrating clear negligence or an attempt to circumvent the Speedy Trial Acts limitations. The government ultimately prevailed at this attempt to delay trial because my attorney requested a continuance the day I was arraigned for the superseding indictment. On the record I objected to the continuance and the new discovery that caused the continuance but the district judge granted the continuance over my objection. **United states v. lloyd, 1997 u.s app lexis 23816** "continuance requests by counsel was in conflict with speedy trial letters and assertions by client. Different district judge was to determine if speedy trial violation was with or without prejudice." **Nelson v. Hargett 989** "find that, on the particular facts, the failure to file a speedy trial motion was not a reasonable trial strategy but instead appeared to be the result of ineffective counsel"

united states v. hall 181 f.3d (where defense counsel does not assert his clients right to speedy trial, a defendant may alert the court directly of his desire not to waive those rights.)

Attached is a pro se motion I sent to the district judge July 2021 prior to trial. It was stricken by the district judge, referenced to my defense attorney and ultimately disregarded.

The personal and testimonial prejudice I endured due to the continuances granted over my objections are overwhelming and stressful. Appearing before the Honorable Judge Weksler, Josh Tomcheck (defense lawyer), Melanie Smith(u.s attorney) and Donnell Henry(defendant) agreed 11/22nd would be an appropriate date. A severance, superseding

indictment nor additional discovery was never mentioned the day I asserted my right to speedy trial on the record. Last minute adjustments caused many inconveniences to me and my family whom were coming from California. Due to the constant change of trial dates and the pandemic,witnesses traveling from California were ultimately unavailable who can prove my intentions the day of the drug transaction. Phone conversations between me and the informant were also not available. Nobody knew when the trial would actually commence. After the june 14th continuance my grandma past away, I was sent to solitary confinement on multiple occasions prior to trial and after trial for no apparent reason. During trial all the jury wore masks and during his testimony the informant wore a mask. Id love to actually confront the accuser,not a guy with a mask on. I was also denied my entrapment jury instructions. Please help. Ive inquired to my lawyer and the district judge.

United states v. olsen, 494 fed. Supp 3d 722 "The united states constitution protects our fundamental freedoms and liberties. One of the most important rights of the accused is to a public and speedy trial. It protects against undue and oppressive incarceration prior to trial and it allows the accused the ability to defend himself against the criminal charges before evidence becomes lost or destroyed and memories fade"

ORDER

IT IS ORDERED that ECF No. 126 is DENIED without prejudice under LR IA 11-6(a), which provides, "Unless the court orders otherwise, a party who has appeared by attorney cannot while so represented appear or act in the case. This means that once an attorney makes an appearance on behalf of a party, that party may not personally file a document with the court; all filings must thereafter be made by the attorney."

IT IS SO ORDERED

DATED: 5:26 pm, January 04, 2022



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

motion to dismiss based on speedy trial violations pursuant to
18 U.S.C. 3161

I'd like a continuance request made by my appointed counsel and I do so viewed with skepticism. I've invoked my right to speedy trial and there have been multiple occasions where continuances have been granted, objection and even waiver. My presentative shows my will to conform to my trial. What's relevant is "whether the government or the defendant is to blame for the delay." Doggett v. United States, "Well-known as early as 1944, the Actus Reus against prosecution." Barker v. United States. Additionally, Barker held that the defendant simply agreed to a continuance and this would not satisfy trial date requirements.

On March 25th 2021

On this day I was appointed a. o. c., Joshua Tomishock as my lawyer. Mr. Tomishock and the A. A. Attorney Melia Le Brun both stated for the record that they'd be ready for trial on June 22nd. Judge Wonski informed both parties that I've invoked my rights to a speedy trial and there will be no more continuances on my case. Mr. Tomishock and I prepared and ready for trial were hit with untimely disclosure of the discovery on June 10th intentionally enabling Mr. Tomishock from representing me properly in trial.

The act states, "that an empanelment does not begin within one required period of time, information or indictment shall be disclosed or made available to the defendant." (a)(2).

Thus, although a trial court is authorized to grant disclosure, it is not compelled to do so. And, as established in *United States v. Tamm*, 199 F.3d 111, 115 (1st Cir. 1999), "Rule 16(d) confines the exercise of that discretion more narrowly, requiring disclosure of the indictment upon initiation of PRETRIAL EXAMINATIONS and specifying criteria to consider in deciding whether to bar prosecution. *United States v. Taylor*.

continuances without my consent. The past continuances which I deferred to
and march were granted by the honorable Judge June 14th the honorable Judge D
informed about the late disclosure of discovery before trial and the court told
Weksler to be ready for trial by June 22nd. During the month of June 2021
Tomsheck stated that it was legal to delay trial until June 22nd and he did so
and requested another continuance past June 22nd. On the record I stated to the Honorable
Jennifer Dursey "I object to the new disclosure, and I object to the continuance of the
June 22nd trial date." Tomsheck, "I just stated," "Tomsheck couldn't proceed to trial till take any
time to file all motions". Over my objections and statements the honorable Judge
Dursey granted the continuance which I believe to cause me ineffective counsel.

I tried to face my accuser's and show my innocence since september 2020
blame any federal agents,any judges,any officers or federal prosecutors. I am in
ENTRAPMENT case on the confidential informant who induced me to do
presents was needed the day of the incident.

JAN 3 - 2022

CLERK US DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

United States of America,

Case No.: 2:20-cr-00148-JAD-BNW

Plaintiff

Order Striking Pro Se Motion
Filed in Violation of LR 11-6(a)

Henry.

ECF No. 74

Defendant

Connell Henry, a criminal defendant represented by counsel, has filed a Motion to Dismiss.¹ Henry cannot personally file motions at this time because he is represented by counsel, and it is his attorney who must file motions on his behalf. Local Rule 11-6(a) explains that "A party who has appeared by attorney cannot while so represented appear or act in the case." This means that once an attorney makes an appearance on behalf of a party, that party may not personally file a document with the court; all filings must thereafter be made by the attorney.² Accordingly, if Henry believes that relief is necessary, he must ask his attorney to file the motion.

Def. Henry is cautioned that not all arguments that a defendant believes should be meritorious, and there may be valid legal or strategic reasons that trained counsel may consider unnecessary, improper, or unwise to bring an issue to the attention of the court.

1 ECF No. 74.

2 LR IA 11-6(a).

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IT IS THEREFORE ORDERED that the Clerk of Court is instructed to STRIKE the motion [ECF No. 74] from the docket. Defense counsel is directed to provide a copy of this order to Henry and consult with him on the issues raised in the now-stricken motion and advise the Court if a proper motion should be filed by counsel.

SIGNED: July 14, 2021.

Jennifer A. Dorsey, U.S. District Judge

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Donald Henry #56438048
N.S.D.C.
2190 E. Mesquite Ave.
Pahrump, Nevada 89060

This correspondence originated
at a detention facility.
The facility is not responsible
for the contents herein.

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FILED
ENTERED
BY:

JAN 3 - 2022

CLERK US DISTRICT COURT
DISTRICT OF NEVADA
DEPUTY

Honorable Judge Weksler
District of Nevada, RM 133A
333 Las Vegas Blvd.
Las Vegas, NV 89101

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